

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

4800 Asbury Road Dubuque-Ia LLC,
Petitioner-Appellant,

v.

City of Dubuque Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-104-0099
Parcel No. 10-17-476-005

On July 16, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant 4800 Asbury Road Dubuque-Ia, LLC was represented by Douglas R. Oelschlaeger of Shuttleworth & Ingersoll Law Firm, Cedar Rapids, Iowa, and submitted evidence in support of its petition. The City of Dubuque Board of Review designated Attorney William R. Stiles of Smith, Schneider, Stiles, Serangeli & Mountsier, Des Moines, Iowa, as its legal representative and submitted evidence in support of its decision. The Appeal Board now having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

4800 Asbury Road Dubuque-Ia, LLC (Hy-Vee), owner of property located at 2395 Northwest Arterial, Dubuque, Iowa, appeals from the City of Dubuque Board of Review decision reassessing its property. The real estate was classified commercial for the January 1, 2009, assessment and valued at \$5,061,500; representing \$1,161,700 in land value and \$3,899,800 in the improvement value. Hy-Vee protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). In response to the protest the Board of Review notified Hy-Vee the January 1, 2009, assessment would not change based on its knowledge of the current market conditions and values.

Hy-Vee then appealed to this Board on the same ground. It seeks \$1,561,500 in relief and values the property at \$3,500,000.

The subject property is a 77,393 square-foot retail-type store built in 1999 and expanded in 2006. It is currently occupied by a Hy-Vee food store. It is located on a 9.560 acre site with approximately 371 parking spaces.

Thomas M. Scaletty of Mainland Valuation Services, Lenexa, Kansas, completed a summary appraisal report on behalf of Hy-Vee reflecting an effective date of January 1, 2009. Scaletty valued the subject property at \$2,710,000.

Scaletty testified at hearing regarding his three approaches to value. He values the subject property based on the cost approach at \$2,540,000. In his opinion, since the property was constructed in 1999 there was adequate market data available for comparison. Scaletty was unaware that part of the building was a 2006 addition, instead he considered it part of the original 1999 construction. On cross-examination, Scaletty claimed this error would not change his conclusion of value because he believed it would only result in a weighted age that would be approximately one year newer. Scaletty also testified he believed the cost approach was unreliable in appraising this property as fee simple because of the amount of obsolescence he believed should be applied to it.¹

Scaletty considered the sales comparison approach to be a reliable indication of market value. He valued the subject property at \$2,710,000 based on sales data. The sales comparables range in price from \$16.67 to \$49.37 per square foot. After adjustments for time/market conditions, age/condition, location/lot size, and physical condition of sales, the adjusted range of value is \$17.48 to \$49.34 per square foot. Scaletty concluded that \$35.00 per square foot was the best representative

¹ Scaletty's appraisal indicates he applied 65% obsolescence to the subject property. He also stated the property's effective age was 10 years old, and its useful life is 40 years. We find this adjustment seems too large and rather illogical when he claims the building has a 40 year useful life.

value for the subject property. He multiplied \$35.00 per square foot by \$77,393 square feet to conclude \$2,708,755, rounded to \$2,710,000.

In the income approach to value, Scaletty determined the subject property to have an estimated value of \$2,670,000. Scaletty used the direct capitalization summary method. He estimated the potential income, adjusted for vacancy loss, and estimated the expenses to arrive at a net operating income (NOI) of \$267,399. Scaletty determined a capitalization rate of 10% from determining an overall rate from the market. Scaletty then divided the NOI by the capitalization rate of 10% for a value of \$2,673,533 rounded to \$2,670,000.

In his final reconciliation and final value opinion he testified that he relied most heavily on the sales comparison approach and determined a final value of \$2,710,000.

Rick Engelkin, Dubuque City Assessor, testified at hearing that although some of his office's public records only show the original date of construction (1999), other data indicates a building permit was acquired for additional construction (2006 addition).

Engelkin also testified that his land values are low; and he needs to do a complete revaluation of all land in the City of Dubuque. Engelkin stated that if he was to revalue all the land, the total value of properties, and particularly the total value of the subject property, would not likely see much change. In this situation, if he raised the land value for Hy-Vee the value attributed to the building would be reduced and the total value would remain the same. He noted that everything in the Northwest Arterial corridor, where the subject property is located, all start with the same land base price and then adjustments are made to the values. Additionally, he noted a 2010 sale of a grocery store in the City of Dubuque. The store sold for \$55 per square foot, and he thinks the subject property is superior. Having no other information regarding the 2010 sale of the grocery store, we give it no weight in this case. However, do find the testimony of the assessor to be very honest and credible.

Kevin M. Pollard of Roy R. Fisher, Inc., Davenport, Iowa, testified at hearing regarding a

January 1, 2009, appraisal report he completed on behalf of the Board of Review. He valued the subject property at \$5,500,000.

Pollard developed the cost approach to value and determined a value of \$6,050,000. He did this by taking the value of the land as determined by market land sales, plus the replacement cost of the improvements minus depreciation. Pollard stated the effective age is only nine-years old and therefore considered meaningful. Pollard valued the land at \$2,600,000 and the improvements, after depreciation, at \$3,447,763 for a rounded total of \$6,050,000.

In the sales comparison or market approach to value, Pollard determined the value to be \$5,500,000. Pollard used five sales that range in size from 30,836 square feet to 85,337 square feet; with overall sales prices ranging from \$1,750,000 to \$13,058,230. The adjusted square-foot prices ranged from \$63.32 to \$85.05. Pollard considered sale number 1 to be one of the most reliable (\$70.94 after adjustments); in fact he referred to it as an excellent comparable to the subject. He also gave some weight to sale number 5 (\$71.60 after adjustments). Placing reliance on these two sales he determined the market square-foot value to be \$71.00. He then multiplied \$71.00 per square foot by 77,353 square feet of the ground floor to arrive at \$5,494,503 or rounded to \$5,500,000.

In the income approach to value, Pollard estimated the subject property at \$5,150,000. Pollard estimated the market rent and adjusted for vacancy allowance, management fees, and reserves to determine a net income of \$488,891. Pollard had 2005 lease information for the subject property. He asked for updated information but did not receive it. Pollard determined a 9.5% capitalization rate from the market. This resulted in the \$488,891 net income divided by the 9.5 percent capitalization rate totaling \$5,146,221 or rounded to \$5,150,000.

Both Scaletty and Pollard performed the three recognized approaches to value and both are qualified appraisers. Each determined a different value for the subject property, and we must consider the two appraisals and determine which to give more weight. First, we are concerned with the fact that

Scaletty did not have knowledge of Hy-Vee's addition to the store, and although he said he asked for income and expense information from Hy-Vee after not hearing anything, he did not make additional requests of Hy-Vee to assist him in forming his opinion. When he was cross-examined regarding the lack of income data, he also tried to claim that it would not have been very useful, but then appeared to concede that it could have helped him confirm his value conclusions. Also, in his report Scaletty gave "significant weight" to the income approach, but in his final reconciliation of value he gave the market approach the most weight. He testified he gave the cost approach the least weight, the income approach very little weight, and relied heavily on the sales-comparison approach. The reason for this contradiction is not clear.

Second, we note the major difference between the two appraisals appears to be the comparable sales used by each appraiser. The law requires comparable sales be used as the primary method for valuing properties. Iowa Code § 441.21(1)(b). The subject property is a first generation sales leaseback. First generation sales leaseback refers to when a contractor builds a structure for the tenant and leases to that tenant. Pollard used first generation sales leaseback properties: three sales have existing leases and another sale was vacant. To the contrary, Scaletty used what is referred to as second generation properties. Usually, this vacant structure sells and needs to be rebuilt to meet the tenant's needs. Scaletty's report mentions that only a few of the nine properties had leases in place prior to the purchase; the majority of the sales he uses were vacant. Scaletty's testimony confirmed that only two of the properties had leases and the rest were vacant.

Hy-Vee's position at hearing regarding each appraiser's choice of sales appeared two-fold. Through Scaletty's testimony, Hy-Vee clearly took issue with the fact that Pollard used built-to-suit first generation sales and that he used sales with existing leases. Scaletty claimed that built-to-suit properties cost more to build than they were worth, likening this to depreciation attributed to a new car when it first leaves the lot. We disagree with Scaletty's statements. Nothing prohibits use of built-to-

suit first generation sales or sales with existing leases or suggests they are not good comparable properties to the subject. Further, by completely ignoring the existence of such sales, Scaletty appears to ignore the assessor's ability to "consider the use of the [assessed] property as a going concern." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 788 (Iowa 2009) (quoting *Riso v. Pottawattamie County Bd. of Review*, 362 N.W.2d 513, 517 (Iowa 1985)). Additionally, we note, despite Scaletty's reference to a leaseback purchase being abnormal, Iowa Code § 441.21(1)(b) does not state this type of transaction is abnormal. Instead, the reference Scaletty gave came from the Department of Revenue's list of abnormal sales for *equalization* purposes, not for initial assessments.

The subject property is a property built for and leased back to Hy-Vee. The subject property has never been vacant, nor did it require modifications to meet the current tenant's needs. The subject property operates as a going concern. *See Soifer*, 759 N.W.2d at 788. Scaletty, however, used primarily vacant sales and the lower limit of sales data. He specifically said he gave no consideration to the fact that the property is a going concern. Further, he specifically did not consider *any* first generation sales in his appraisal. The vacant sales used as comparable properties fail to convince this Board that his determination of value is the actual market value of the subject property for assessment purposes. Scaletty's limited focus on vacant second generation properties leads us to question their actual comparability. There is really no need to consider Scaletty's adjustments to the properties because these sales are not the best comparables available.

Additionally, we find the sales used by Pollard that are first generation sales are permissible for valuation purposes. While Scaletty took issue with Pollard's choice of comparables, and Hy-Vee attempted to discredit Pollard, we note that Scaletty did not engage in a review appraisal of Pollard's work. Further, we note that although three of the sales had leases, Pollard relied most heavily on sales 1 and 5. While Pollard's sale 5 was vacant like Scaletty's sales, Pollard believed sale 1 was an excellent comparable and gave it the most weight. He stated that he relied upon these sales, but

considered all five sales. The purpose of the other three sales was to show the current sales prices of other Hy-Vee stores. The primary difference between Pollard's sales and Scaletty's sales is that Pollard looked at all sales in the market, rather than defining between first generation sales and second generation sales. He chose the first generation sales because the property is a going concern. In this case, if compared to Scaletty's, they are considered to be the better indicator of market value because as previously stated, they reflect the reality of the subject property. We find Pollard's appraisal reliable. We note, however, that even if we found Pollard's appraisal unreliable, we would still find Scaletty's sales comparison approach fails to convince us the subject property is over-assessed based particularly on his reliance upon vacant second generation sales.

Third, we briefly address the adjustments to the properties selected as comparables made by the appraisers. Scaletty's appraisal lacked sufficient detail for this Board to understand the precise adjustments made to the properties and, more importantly, the reasons for those adjustments. In fact, at hearing Scaletty testified that his tables were confusing and when looking at some of them you would not know which properties were superior or inferior to the subject property. Conversely, Pollard's appraisal gives a detailed description of each of the comparable properties he chose as well as reasons for the adjustments made to each one. (Exhibit D pp. 7-7B). We do note, however, that Pollard made large adjustments to the properties with existing leases. He specifically articulated why these adjustments were made but it would draw into question the actual comparability of the properties. Despite the large adjustments, Pollard noted in the appraisal and testified that he gave the most weight to sales 1 and 5, which had the least adjustments of the comparable sales and were not sales leaseback properties.

Finally, we note that although Hy-Vee tried to discredit Pollard's appraisal using Pollard's comparables' actual *assessed values* and comparing them to the adjusted sales prices Pollard determined for those properties, we find this evidence irrelevant. First, the law is clear that

assessments from one jurisdiction (City of Dubuque) cannot be compared to assessments of another jurisdiction (Polk County). *Maytag v. Partridge*, 210 N.W.2d 584, 594-595 (Iowa 1973). Second, an appraiser is attempting to independently determine the market value of a given property. The appraiser should give no weight to how a particular assessor has chosen to value a property, but should instead arrive at his or her own determination of value for that property. The appraiser must use judgment to adjust comparable sales to the subject property to arrive at a market value determination for the subject property. Pollard did this. Pollard did not try to make his adjustments “match” any given assessor’s adjustments, nor should he have done so. Pollard independently determined the market value of the subject property by using comparables sales, adjusting those sales as he saw fit, explaining the reasons for those adjustments, and arriving at a conclusion of value based on the sales comparison approach.

Scaletty’s appraisal fails to convince us that his determination of value accurately reflects the market value for the subject property as of the assessment date. We find Pollard’s appraisal is more reliable. Reviewing all the evidence, we find the evidence is lacking to support Hy-Vee’s claim that the property was assessed for more than authorized by law as of January 1, 2009.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment*

Appeal Bd., 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Although we review the record as a whole and there is no presumption the assessment is correct, the taxpayer carries the burden of proof in this appeal. Iowa Code § 441.21(3). In order to shift the burden to the Board of Review the taxpayer must introduce competent evidence from two disinterested witnesses that the property is over-assessed. In this case, Hy-Vee only called one witness. It did not shift the burden to the Board of Review, which would have required it to defend its value.

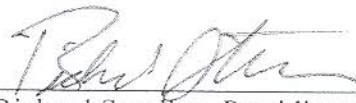
Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," "other factors" may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); Iowa Code § 441.21(2). "To determine whether other properties are sufficiently comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the conditions with respect to the other land must be 'similar' to the property being assessed." *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 783 (Iowa 2009). "Similar does not mean identical, but having a resemblance; and property may be similar . . . though each possess various points of difference." *Id.* Determining comparability of properties is left to the "sound discretion" of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is "free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value" *Heritage Cablevision*, 457 N.W.2d at 598.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Findings are "based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs." Iowa Code § 17A.12.

Viewing the evidence as a whole, we determine that substantial evidence is lacking to support Hy-Vee's claim of over-assessment as of January 1, 2009. The sales chosen by Scaletty are not the best comparable sales available. The Pollard appraisal, which we find the most credible evidence of the property's fair market value, supports the assessment. We, therefore, affirm the Hy-Vee property assessment as determined by the Board of Review. The Appeal Board determines that the property's assessment as of January 1, 2009, is \$5,061,500; representing \$1,161,700 in land value and \$3,899,800 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment of the Hy-Vee property located in Dubuque, Iowa, as determined by the City of Dubuque Board of Review, is affirmed.

Dated this 23 day of September, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9-23</u> , 201 <u>0</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>John W. Stiles</i></u>